

BOARD OF ZONING APPEALS
January 10, 2013

Mr. Marvin Rhodes called the meeting to order at 7:00 p.m.

A. Roll Call

Present:

Mr. Marvin Rhodes
Mr. David Otey, Jr.
Mr. Stephen Rodgers
Mr. Ron Campana, Jr.

Others Present:

Mr. Jason Purse, Zoning Administrator
Ms. Christy Parrish, Proffer Administrator
Mr. John Rogerson, Senior Zoning Officer
Ms. Terry Costello, Zoning Officer

Mr. Rhodes stated that he would like to recommend action on the minutes until the end of the meeting. The Board agreed. Mr. Rhodes gave information on the purpose of the Board of Zoning Appeals.

B. Old Business

There was no old business.

C. New Business

ZA-0005-2012 328 Mill Stream Way

Mr. and Mrs. Mike Benson have applied for a variance to Section 24-238(b), Yard requirements, to reduce the required rear yard setback from 35 feet to approximately 21 feet. This proposed variance request is to allow the continued placement of a deck and hot tub that encroaches into the rear yard setback at 328 Mill Stream Way in the Settler's Mill Subdivision.

Mr. and Mrs. Benson purchased the property on January 24, 2012. Prior to the closing, they discovered that the deck and hot tub on the rear of dwelling were erected without building permits or approvals from James City County during the home inspection. Prior to the closing, the sellers indicated that they did not have adequate time to remedy the deck and hot tub issues and the Bensons did not want to delay the closing.

A portion of the deck and hot tub encroaches 13.4' into the required 35-foot rear yard setback. The adjacent property to the rear is owned by the Home Owners Association and is designated natural open space.

Upon closing on the property, the Bensons consulted with James City County staff from Building Safety and Permits, Engineering and Resource Protection and Zoning Enforcement. They have obtained building permits, installed safety railings, and received approvals from the Chesapeake Bay

Board for the continued placement of the deck and hot tub.

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff finds no undue hardship in this case and cannot support the variance. Staff acknowledges the property owner acquired the property after the construction of the deck/hot tub and has worked with staff diligently to remedy the issues. However should the Board wish to grant the variance, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area. The Board may also add a condition to the variance that no further encroachment is permissible.

Mr. Rodgers asked what the time frame was between when the problem was discovered and the closing date on the sale of the property.

Ms. Parrish answered she was unsure of the time frame but that the homeowner was present to answer any questions. She also stated that staff became involved when the real estate agent contacted the County.

Mr. Otey asked about the restoration agreement that is required as part of the approval from the Chesapeake Bay Board.

Ms. Parrish did not have that information but deferred to the homeowner.

Mr. Otey asked how long the deck was there before the violation was discovered.

Ms. Parrish stated she did not know when the deck was constructed.

Mr. Otey asked if the notice of this case was sent to homeowners across the ravine.

Ms. Parrish stated that the notice went to the homeowner's association since they own the property directly behind this parcel. Also notified were the property owners adjacent to the parcel.

Mr. Rhodes asked if the deck in question was attached to the structure.

Ms. Parrish explained the difference between detached and attached, and accessory structures. If the structure is within 10 feet of the main structure, even if detached, normal setbacks would need to be adhered to. She also stated that the permit for the deck was obtained after the fact and cannot receive final approval until approval is received from the Board of Zoning Appeals.

Mr. Rhodes asked if the deck met the requirements set forth by the Building Safety and Permits Division.

Ms. Parrish stated that she believed it did and that final inspection was contingent on this Board's approval of the setback modifications.

Mr. Rodgers asked a question concerning the conservation easement swap that was a requirement from the Chesapeake Bay Board.

Ms. Parrish stated that there is a natural open space easement on top of this portion of the property. There are two options, either some portion of land on the side can be deemed as open space, or the County Engineer can allow the encroachment. It will be decided as to which option after this case has been decided.

Mr. Otey wanted clarification that the footprint of the deck would not be changed if this modification is approved. He wanted to change the wording of the resolution so that the deck could not be expanded horizontally across the back of the house, being that the current wording changes the rear yard setback. He suggested attaching the plat to the resolution to ensure for no further encroachment. Mr. Otey stated that when the plat is referred to, it should be stated as such “attached hereto and made a part hereof and incorporated herein.”

Mr. Rhodes opened the public hearing.

Mr. Benson, the homeowner, stated currently he resides in Maryland, and that this purchase will be his retirement home. He stated that when the permits were obtained for the safety railings it was discovered that there was not a permit obtained for the deck itself and hot tub. It was roughly two weeks before closing Mr. Benson stated that the house was built in 2004 and his guess would be that the deck was built in 2006/2007. He also stated that the Homeowner’s Association was aware of the deck and approved it. Mr. Benson stated that he took a risk by purchasing this home and trying to get all of the necessary approvals for the deck and hot tub. He also stated that he is required to install some plantings as part of the restoration agreement. Mr. Benson stated that he was waiting for this approval before investing in the plantings. He thanked everyone in the County for assisting him throughout this process.

There being no further comments, Mr. Rhodes closed the public hearing.

Mr. Rodgers stated that he was in favor of the modification with the added language suggested by Mr. Otey.

Mr. Otey made a motion for approval, but wanted to change the language to just allow for the deck.

Mr. Rodgers suggested adding the word “solely”. It should read as follows “to reduce the required 35 foot rear yard setback to 21.6 feet solely to allow the continued placement of a deck and hot tub as shown as the plat entitled physical survey Lot 18 Section 6 Settlers Mill for Mike and Michelle Benson dated October 2012 which is attached to and made a part hereof.”

Mr. Rhodes stated that under item no. 5, “approaching confiscation” needs to be deleted.

Mr. Rodgers seconded the motion.

In a roll call vote the motion was approved. (4-0)

ZA-0007-2012 140 Point O’Woods

Mr. Craig Wilson on behalf of property owners Mr. & Mrs. Stackhouse has applied for a variance to Section 24-238(b), yard requirements, to reduce the required rear yard setback from 35 feet to approximately 20 feet. The rear property line is the edge of the existing lake known as Mirror Lake. This proposed variance request is to allow the continued placement of a portion of the existing dwelling and for the construction of a proposed sunroom. This property is zoned R-1, Limited Residential and can further be identified as JCC RE Tax Map No. 1340800001.

On July 31, 2003, a building permit application was submitted and approved for the placement of a modular home located at 140 Point O'Woods. The proposed development plan originally included a detached garage on the left side of the house, a deck on the back left of the house, and a screened porch on the back right of the house. At that time, the detached garage and the screened porch was omitted. On that development plan, the distance from the rear of the house to the edge of the water was identified at 40 feet. The proposed location of the house met all setback requirements.

In July 2004, the property owner made application to construct a detached garage to the left of the house. That survey showed the rear of the house as being 22.8 feet from the edge of the water, the edge of Mirror Lake had moved approximately 18 feet closer to the house. In December 2004, a foundation survey was done as part of the process and that survey showed the rear of the house as being 24 feet from the edge of the water.

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff would recommend that a variance be granted for the existing portion of the house that is located in the setback to clear up the setback issues associated with the existing house caused by the varying water levels in Mirror Lake. Staff cannot support further encroachment into the rear yard setback for the proposed sunroom since the property has been put to use by the existence of the current dwelling. However, should the Board wish to grant the variance for the sunroom, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Rhodes questioned the fact that the setback was established by a moving boundary.

Mr. Rogerson stated that this was a unique case and there is a spillway under Point O'Woods that goes into a ravine. Mr. Rogerson stated that there was no work done in that area that would have changed the elevation of the inlet.

Mr. Rhodes asked what happens if the water level changes again.

Mr. Rogerson suggested having language that states "no further encroachment."

Mr. Otey suggested tailoring the variance to reflect the footprint of the house with the sunroom added instead of referring to the distance to the lake. He suggested having language that said "reducing the rear setback is reduced to allow for the continued placement of the house and the proposed sun room as shown on the survey dated December 16, 2004 with no further encroachment." It was also noted to add the dimensions of the sunroom.

Mr. Rhodes stated that under item no.5 to delete "approaching confiscation."

Mr. Rhodes opened the public hearing.

Mr. Craig Wilson spoke on behalf of the owners. He stated that the sunroom was part of the original plan and if the rear setback had not moved it would have been allowed. He stated that the surrounding lots have banks around their property where this property slopes directly into the water. Mr. Wilson feels that this is a hardship. He showed pictures of other properties along the water and their property lines.

There being no further comments Mr. Rhodes closed the public hearing.

Mr. Rodgers made a motion for approval with the changes that the resolution references the survey.

In a roll call vote the application was approved. (4-0)

Mr. Stackhouse, the owner, thanked the Board for their consideration and their time.

D. Minutes

April 1, 2010

Mr. Rhodes stated that the roll call should be the first item listed, not the second.

In a voice vote, the minutes were approved with changes. (2-0, Rodgers and Campana abstained)

November 4, 2010

In a voice vote, the minutes were approved. (2-0, Rodgers and Campana abstained)

February 2, 2012

Mr. Rodgers corrected the spelling of his last name. (4-0)

In a voice vote, the minutes were approved with corrections.

June 7, 2012

Mr. Rhodes asked to delete comment at the bottom of page 4.

In a voice vote, the minutes were approved with changes. (4-0)

E. Matters of Special Privilege

Election of Officers

Mr. Otey nominated Mr. Rhodes for chairman of the Board of Zoning Appeals.

Mr. Rhodes stated that his term expires March 2013. He stated that if he is re-appointed he is willing to serve as chairman.

Mr. Campana seconded the nomination.

In a roll call vote, Mr. Rhodes was voted chairman.

Mr. Campana nominated Mr. Otey as vice-chairman with a second from Mr. Rodgers.

In a roll call vote, Mr. Otey was elected as vice-chairman.

2013 Meeting Schedule

Mr. Rodgers stated that the February meeting may be a problem for him but as of right now he should be in attendance.

Ms. Parrish stated that staff is still searching for a fifth member.

Introduction of New Zoning Administrator

Ms. Parrish introduced Mr. Jason Purse who has been appointed as the new Zoning Administrator. He has been with the County for eight years and was a Senior Planner II for the Planning Division.

E. Adjournment

There being no further business, the meeting was adjourned 8:25 at p.m.

Marvin Rhodes
Chairman

Jason Purse
Secretary